

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

EMANUEL G. REED,

Petitioner,

Case No. 05-C-395

v.

DANIEL BENIK,

Respondent.

OPINION AND ORDER

Emanuel Reed, a prisoner in state custody, has filed a Petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Respondent has moved to dismiss on the ground that the Petition was untimely filed in that Reed failed to file his petition within the one-year period of limitation set forth in 28 U.S.C. § 2244(d)(1). Reed's conviction became final in 1993, and he filed this Petition on April 6, 2005.

Reed has responded to the motion to dismiss merely by reciting bare and unsupported allegations of actual innocence. His submission does not meet the standard set forth by the Seventh Circuit which has ruled that, in order for a claim of actual innocence to support equitable tolling of the one-year limitation period, the Petitioner would have to show some action or inaction on the part of the Respondent that prevented him from discovering the relevant facts in a timely fashion; or, he would have to show that a reasonably diligent petitioner could not have discovered these facts in time to file a petition within the period of limitations. See Glidon v. Brown, 384 F.3d 883, 887 (7th Cir. 390), cert. denied, 125 S. Ct. 1348 (2005). See also Williams v.

Sims, 389 F.3d 958, 958-64 (7th Cir. 2004); Flanders v. Graves, 299 F.3d 974, 978 (8th Cir. 2002).

Because Reed's Petition was not filed within the one-year limitation period and because he has not established a basis for equitable tolling, the court ORDERS that the Respondent's "Motion to Dismiss Petition for Writ of Habeas Corpus" (filed May 6, 2005) IS GRANTED.

IT IS FURTHER ORDERED that Emanuel Reed's "Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody" (filed April 6, 2005) IS DENIED.

IT IS FURTHER ORDERED that this action is dismissed with prejudice.

IT IS FURTHER ORDERED that the Clerk of Court shall enter a final judgment as a separate document. See Federal Rule of Civil Procedure 58. This judgment shall provide that:

Emanuel Reed's Petition for a Writ of Habeas Corpus came before the court, the Honorable Thomas J. Curran, District Judge, presiding, and the Petition having been dismissed because it was not timely filed,

IT IS ORDERED AND ADJUDGED

that this action is dismissed with prejudice.

Done and Ordered in Chambers at the United States Courthouse,
Milwaukee, Wisconsin, this 28th day of June, 2005.

s/ Thomas J. Curran
Thomas J. Curran
United States District Judge